

The 29th December, 1981

No. 9(1) 81-6Lab/4214. -- In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s. Bharat Carbon and Ribbon Mfg. Co. Ltd. Faridabad.

**BEFORE SHRI M C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD**

Reference No. 353 of 1978

Between

**SHRI HARI SH KUMAR, WORKMAN AND THE MANAGEMENT OF M/S.
BHARAT CARBON AND RIBBON MFG. CO. LTD., FARIDABAD.**

Present: -Shri S. R. Gupta, for the workman.
Shri O. P. Malhotra, for the management.

AWARD

By order No. ID/FD/127-78/38227, dated 18th August, 1978 the Governor of Haryana referred the following dispute between the management of M/s. Bharat Carbon and Ribbon Mfg. Co. Ltd., Faridabad and its workman Shri Harish Kumar, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947: -

Whether the termination of services of Shri Harish Kumar was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 8th March, 1979 by my learned predecessor:—

1. Whether Shri Harish Kumar was a workman?
2. Whether the termination of services of the workman was justified and in order ?
3. Relief.

Issue No. 1 was treated as preliminary. The workman examined himself as WW-1 and the management examined Shri Gurcharan Singh Secretary of the management as MW-1. Arguments were heard. I now give my finding issueswise:—

Issue No. 1: -WW-1 stated that he was appointed as a Laboratory Assistant on 11th February, 1967 at Rs 124 p.m.,—*vide* Ex. W-1 appointment letter. He was confirmed,—*vide* Ex. W-2. He was promoted as Senior Laboratory Assistant, *vide* Ex. W-3. He was given three months training as Foreman, *vide* Ex. W-4 and his services were terminated,—*vide* Ex. W-5. He further stated that he was looking after attendance of the workmen, checking of carbon papers on the machine and pasting stereo on the rolls of machine for printing of carbon papers. He had no authority to appoint, grant leave or suspend any workman. His duty used to be in shifts and he was a Foreman. In cross examination he stated that at the time of termination his pay was Rs 480 *plus* Rs 44 D. A. He used to recommend leave to

the workmen. He denied the suggestion that he used to sanction leave. He admitted his signatures on Ex. M-1 to Ex. M-16. He also admitted as correct that whenever a workman had to go out he went with his permission. He also admitted it was correct that he had to requisition for over time but the same was subject to sanction of the Production Manager and Works Manager. He admitted his signatures on Ex. M-17 to M-23. He admitted that used to requisition goods for the store and prepared slips like Ex. M-22. He admitted Ex. M-24 as his own. He used to write for supply of milk to the workmen which the higher authority had to sanction. He admitted having written Ex. M-25 but the same was sanctioned by Shri Thapar the Works Manager. Whenever there was a fault in the machine he had to take instructions from the higher authorities or call some fitter for doing the needful. In case he was in a position to solve the difficulties based on his experience and knowledge he used to solve the same.

MW-1 stated that Shri Harish Kumar was a Foreman. The factory used to run three shifts and there were three Foreman Incharge of each shifts. He used to plan production of the shift, employment of workers and supervise the work of workman of the shift. The workman used to go to him whenever they faced any difficulty and sought his guidance. He used to do meritrating of the workman under him and used to appraise their performance. He also used to sanction leave and detained them when they were required for over time work. In cross examination he stated that there were about 450 workmen in the factory, General Manager was at the top then Secretary, Works Manager, Engineer, Assistant Engineer, Foreman and workers. He admitted as correct that if a Foreman does not obey the Engineer it was a misconduct. He admitted that the Certified Standing Orders applied to the Foreman. He could not tell in case whether Shri Harish Kumar had taken disciplinary action against the workman. He admitted that he had no power to sanction increments. He was only to recommend the same for consideration of the management. He was Foreman in the production department. About 50 workman worked in a shift in that department. He denied that only 15 workmen were working in a shift. Shri Harish Kumar was Incharge of the shift. He admitted that Shri Harish Kumar was leader of the team of the shift and was responsible for production. In case there was a deficiency he was held responsible. In case of break down he had to contact maintenance department. He was responsible for quality of production. There was a separate department for preparation of ink for carbonising and it was not the duty of Shri Harish Kumar. He might have been preparing ink before his promotion as Foreman. He denied the suggestion that he used to paste stero on the rolls of the machine. There was no duty chart in writing for officers or Shri Harish Kumar. His duty could be gathered from the record. He admitted that the workman did not mark attendance in his hand in the register for carbon section staff. The staff register contained 40 names in the month of January, 1978. He had brought documents Ex. M-26 to Ex. M-85 from which the nature of duty of the workman could be gathered. He used to sign documents like Ex. M-26 to M-85.

The learned representative for the workman argued that Shri Harish Kumar was appointed as a workmen and standing orders were applicable to him. He further argued that he was held to be a leader of the team for giving production and cited 1977-JI LLN, pag 517. He also argued that he was only Foreman in the name but was not performing any supervisory duty. On the other hand the learned representative for the management argued that it was not the nomenclature of the post but the nature of work which decided if a concerned employees was a supervisor or workman. He further argued that the employee used to do production, planning, meritrating and appraisal of performance of workers. He used to sanction leave. He cited 1970-II LLJ, page 590.

I have gone through the records and documents placed on the file and find that according to the demand notice Shri Harish Kumar was drawing a salary of Rs 575 p. m. The management in the written statement took objection that he was not a workman and was doing supervisory duty. He had considerably long period of service and joined as a Laboratory Assistant in 1967. He was confirmed in 1972 as Senior Laboratory Assistant and

then in 1976 he was promoted as Foreman. I have also gone through the documents Ex. M-4 to M-16, Ex. M-26 to M-32 and find that Shri Harish Kumar had recommended leave for the workmen. He struck off the word refused because in the column are words "leave is recommended refused to the applicant for ---- days from ---- to ---- Date ---- Incharge/Departmental Head. He signed as Incharge. I have also gone through the documents Ex. M-17 to M-25, M-33 to M-54. According to these documents he detained workers for over time and signed the workers detention notes. He sanctioned short leave to workers by signing Ex. M-55 to M-59, short leave passes. He requisitioned material from stores according to documents Ex. M-60 to M-66 and he ordered issue of milk to workers—*vide* Ex. M-67 to M-70. He wrote production chart Ex. M-71 to M-85. Shri S.R. Gupta learned representative for the workman laid great emphasis on the admission of MW-1 that Certified Standing Orders were applicable to a Foreman and argued that standing orders were never applied to supervisory staff. Therefore, he was a workman. Shri O.P. Malhotra learned representative for the management had earlier moved an application along with affidavit of MW-1 that he had never made such an admission and the same might be a typographical mistake. On that application I did not pass a separate order because the matter could not be decided only by such a statement alone. As held in 1980 II-LLJ, page 116 that nature of work and not nomenclature i.e. to be considered in deciding whether a person is a workman or not. In the instant case Shri Harish Kumar joined service as Laboratory Assistant and in the appointment letter it is mentioned that the conditions of service will be governed by the Certified Standing Orders. It was in the year 1967. It is an admitted fact that he was promoted and designated as Foreman. He was Incharge of a Shift, used to sanction short leave and recommend other leave to various workmen. The documents are overwhelming to show that he also submitted production chart and requisitioned staff for over time work. In my opinion the management has fully proved that this employee was doing work of supervisory nature and he was not a workman as defined in section 2(s) of the J.D. Act. This issue is decided in favour of the management.

Issue No. 2:—As per finding given by me on issue No. 1, this issue has become redundant.

Issue No. 3:—Shri Harish Kumar is not entitled to any relief.

While answering the reference, I give my award that Shri Harish Kumar is not entitled to any relief in this reference. I order accordingly.

M. C. BHARDWAJ,

Dated the 24th November, 1981.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

—
No. 1073, dated 27th November, 1981.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal Haryana,
Faridabad.

The 29th December, 1981

No. 9(1)81-6Lab-14299.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Faridabad in respect

of the dispute between the workmen and the management of M/s. (1) Hindustan Presstressed Concrete Structure Pvt. Ltd., 12/1 Mathura Road, Faridabad (2) M/s. Vijay Construction Company, 12/1 Mathura Road, Faridabad, (3) M/s. Deepak Construction Company, 12/1 Mathura Road, Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 41 of 1980

Between

S/Shri Shyam Lal, Nar Singh, Sadhu Singh, Shiv Parshad, Ashok Kumar, Ram Gahan, Ram Saroop, Ghisa Singh, Shatrughan Singh, Hari Shanker, Anil Kumar, Shiv Shanker, Parmeshwar Singh, Babu Lal, Kuni Bihari and Kalla Singh workmen and the management of M/s. (1) Hindustan Presstressed Concrete Structure Pvt. Ltd., 12/1, Mathura Road, Faridabad (2) M/s. Vijay Construction Company, 12/1, Mathura Road, Faridabad (3) M/s. Deepak Construction Company 12/1, Mathura Road, Faridabad.

Present. - Shri R.N. Roy for the workmen.
Shri R.C. Sharma for respondent No. 1.

AWARD

By order No. ID/FD/263-79/34604, dated 26th June, 1980 the Governor of Haryana referred the following dispute between the management of M/s. (1) Hindustan Presstressed Concrete Structure Pvt. Ltd., Faridabad (2) Vijay Construction Company, Faridabad (3) M/s. Deepak Construction Company, Faridabad and its workmen S/Shri Snyam Lal, Nar Singh, Sadhu Ram, Shiv Parshad, Ashok Kumar, Ram Gahan, Ram Saroop, Ghisa Singh, Shatrughan Singh, Hari Shanker, Anil Kumar, Shiv Shanker, Parmeshwar Singh, Babu Lal, Kuni Bihari and Kalla Singh to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

“Whether the retrenchment of Sarvshri Shyam Lal, Nar Singh, Sadhu Ram, Shiv Pershad, Ashok Kumar, Ram Gahan, Ram Saroop, Ghisa Singh, Shatrughan Singh, Hari Shanker, Anil Kumar, Shiv Shanker, Parmeshwar Singh, Babu Lal, Kuni Bihari and Kalla Singh was justified and in order ? If not, to what relief are they entitled ?

On receipt of the order of reference, notices were issued to the parties. Respondent number 1 made appearance but respondent number 2 and 3 will not serve as it was reported that such parties does not exist at the given address. The workmen were directed to file address of the parties to effect service. The workmen again filed the same address i.e., 12/1 Mathura Road, Faridabad but as earlier pointed out the report on the file states that no Company of the above names exist at the given address and the case was proceeded against, respondent number 1. The parties filed their pleadings. On the pleadings of the parties following issues were framed on 3rd March, 1981 :—

- (1) Whether the present reference is barred ?
- (2) Whether the dispute is not an industrial dispute ?
- (3) Whether the workmen are stopped from claiming reinstatement.
- (4) Whether the retrenchment of Sarvshri Shyam Lal, Nar Singh, Sadhu Ram, Shiv Parshad, Ashok Kumar, Ram Gahan, Ram Saroop, Ghisa Singh, Shatrughan Singh, Hari Shanker, Anil Kumar, Shiv Shanker, Parmeshwar Singh, Bagu Lal, Kuni Bihari and Kalla Singh was justified and in order ? If not, to what relief are they entitled to ?

And the case was fixed for the evidence of the management, who examined Shri R.C. Sharma as MW-1. The workmen examined Shri R.N. Roy President, Merchantile Employees' Association as WW-1, Shri Kunj Bihari as WW-2, Shri Ghisa Singh as WW-3, Shri Balu Lal as WW-4, Shri Ashok Kumar as WW-5, Shri Nar Singh as WW-6, Shri Shatrughan as WW-7, Shri Parmeshwar Singh as WW-8 and Shiv Parshad, Anil Kumar, Ram Gahan and Mohinder Singh tendered for cross examination. Arguments were heard. Now I give my finding issue-wise :—

Issue No. 2.—MW-1 tendered in evidence photo copies of award Ex. M-1 and M-2. He also tendered receipts Ex. M-3 to M-20 by which the concerned workmen had received payment. WW-1 stated that the workmen has given him authority letter Ex. W-1. He has sent by registered post demand notice Ex. W-2. Demand notice sent to M/s. Vijay Construction Company was received back underlivered. In cross-examination he stated that the demand notice and claim statement were signed by him. He admitted that the workers named in para 5 of the claim statement had settled their disputes and both the representatives of the parties had made a statement to that effect in court. He pleaded ignorance about the settlement of some Kunj Bihari and Shiv Shanker. He admitted calculation made on Ex. M-21 and M-22. He also admitted that the workmen of the factory had not espoused the demand of the concerned workmen.

The learned representative for the management argued that the case of the concerned workmen was not espoused or supported by other workers of the factory. On the other hand the learned representative for the workmen argued that the dispute was under section 2-A and no espousal was necessary.

I have considered the arguments and find that section 2-A states as under :—

Whether any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

No doubt the present dispute is regarding retrenchment of 16 workmen named in the reference. This reference is made under section 10(1)(d) of the I.D. Act. Thus it is a collective dispute and not an individual dispute as contemplated by section 2-A. The demand notice was not given by any individual workman rather it was given by the President Mercantile Employees Association and so was signed the demand notice by the same President. So no stretch of imagination this can be called an individual dispute. It is settled law as laid down by the Supreme Court in Bombay Union of Journalist and the Hindu Bombay that in such cases the dispute must be espoused by a substantial number of workmen. A dispute must be proved to be an industrial dispute by the party who invokes jurisdiction of the Industrial Tribunal [as held in 1975 (31) FJR 305]. It was admitted by WW-1 that no other workmen of the factory espoused the cause of the concerned workmen, therefore, it is proved that the dispute did not become an industrial dispute as defined in section 2(k) of the I.D. Act. This issue is decided in favour of the management.

Issue No. 1.—The learned representative for the management argued that the references was barred in view of award passed by the Labour Court, Rohtak in reference number 33 of 1977. The award was between the same parties. I find the contention is correct. However, dispute was with regard to termination of services of the concerned workmen. I find that in issue No. 1 it was decided by the learned Presiding Officer that the concerned workmen were not employees of M/s. Hindustan Pressstressed Concrete Structure Company, Faridabad. In the presence of that award the claimants could not agitate dispute or of retrenchment

also against that party because the matter was between the same parties, and was adjudicated fully before pronouncing the award. The reference was, therefore, bad so far as against that party. This issue is, therefore, decided in favour of the contenting management.

While answering the reference, I give my award that the reference fails on these issues and the workmen are not entitled to any relief. I order accordingly.

M. C. BHARDWAJ,

Dated the 9th November, 1981.

Presiding Officer, Industrial Tribunal,
Haryana, Faridabad.

No. 1038, dated 25th November, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer, Industrial Tribunal,
Haryana, Faridabad.

No. 9(1)81-6Lab./14300.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Mahavir Metal Works Ltd., Mathura Road, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 423 of 1978
between

SHRI HARI NATH, WORKMAN AND THE MANAGEMENT OF M/S.
MAHAVIR METAL WORKS LTD., MATHURA ROAD, FARIDABAD

Present.—

Shri R. N. Roy, for the workman.

Shri S. L. Gupta, for the management.

AWARD

By order No. ID/FD/1/139-78/41727, dated 14th September, 1978, the Governor of Haryana referred the following dispute between the management of M/s Mahavir Metal Works Ltd., Mathura Road, Faridabad and its workman Shri Hari Nath, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Hari Nath was justified and in order ?
If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 14th February, 1979 :—

- (1) Whether the termination of services of the workman was justified and in order ?
- (2) Whether the workman is gainfully employed ? If so, to what effect ?
- (3) If not, to what relief is he entitled ?

And the case was fixed for the evidence of the management, who examined Shri S. K. Khanna, Manager as M.W.-1 and Shri H. L. Kapoor, Enquiry Officer as M.W.-2. The workman examined Shri R. N. Roy, President, Mercantile Employees Association as W.W.-1 and himself as W.W.-2. Arguments were heard. I now give my finding issueswise:-

Issue No. 1.— M.W.-1 stated that he knew the concerned workman who was issued charge-sheet Exhibit M-1. Reply of the workman was Exhibit M-2. Enquiry Officer was appointed,—*vide* Exhibit M-3. Enquiry proceeding was Exhibit M-4. The workman admitted his fault. Finding was at point A of Exhibit M-4. Order of punishment was Exhibit M-5. The workman represented,—*vide* Exhibit M-6 on which enquiry was reopened and Shri H. L. Kapoor was appointed Enquiry Officer,—*vide* Exhibit M-7. On receipt of enquiry finding and proceedings the workman was dismissed,—*vide* Exhibit M-8. The workman refused to receive dismissal order, therefore, letter, Exhibit M-9 was sent by post. Acknowledgement receipt was, Exhibit M-10. In cross-examination he stated that no show-cause notice was issued to the workman. He had read enquiry finding and found the workman guilty. He had shown Die to the Enquiry Officer. He could not say if the Die weighted 40 Kilos. Die was completed and after lowering the same from the lathe machine it was broken by the workman, by stroke of hammer. He admitted it as correct that the mentel which was inner portion of the Die was broken. The concerned workman had asked his helper to take out a pin from the same who hammered it. The concerned workman also struck hammer over the same. He denied the suggestion that the Die could be set right by remounting the same over lathe machine. M.W.-2 Shri H.L. Kapoor deposed that he held the enquiry against the workman. The proceedings were Exhibit M-11. The workman participated in the enquiry. He was also assisted by his representative. The workman signed first page of enquiry proceeding. He cross examined management witnesses and also led his defence. He did not sign the proceedings when management evidence was recorded but signed each page of his defence proceedings. The report of enquiry was Ex. M-12. The workman was found guilty. He had copy of standing orders with him at the time of enquiry and he had also examined the Die. Papers produced during the enquiry were Exhibit M-13 to M-19. In cross-examination he stated that Exhibit M-11 was photo copy of proceedings. He had not mentioned in the proceedings that he had examined the Die. He denied the suggestion that the Die was not produced before him. First enquiry was held by Shri S. L. Gupta. He admitted that he was Assistant of Shri S. L. Gupta. He denied the suggestion that the workman was held guilty because he had levelled allegations against Shri S. L. Gupta.

W.W.-1 stated that the workman had filed a complaint in the union which was signed by the concerned workman and the witness. Copy of complaint and demand notice, Exhibit W-2 was sent to the management by registered A.D. post. The workman was a member of the union. In cross-examination he stated that the workman was member of the union prior to his dismissal. He did not remember the date of his enrolment as member but he was enrolled in the beginning of year 1977. W.W.-1 the concerned workman deposed that he joined service on 31st January, 1977 as a Tool Room Turner. He participated in the enquiry. His representative was not allowed to participate in the enquiry. Shri Dhani Ram was union President at that time. He further stated that he never confessed his guilt. He had received copy of proceedings of the enquiry side by side. He had replied the charge sheet. The 2nd enquiry was held by Shri H. L. Kapoor. In that enquiry his representative was Shri Ram Saran Gupta, but he did not receive the copy of proceedings. He was not given list of witnesses and documents, nor he was given copy of enquiry finding. The enquiry proceedings were recorded by the Enquiry Officer of his own free will and later on got signed by him. He had appeared as his own witness and also his helper was examined in defence. He had signed the proceedings after recording of his statement. The Die could be repaired. In cross-examination he stated that he was Inter pass. He was well in Hindi. He admitted it as correct that he had signed the statement made before Shri S. L. Gupta. After receipt of that proceeding he had gone to Shri R. N. Roy and he had written letter, Exhibit M-6. He denied the suggestion that Shri Dhani Ram was present at the time of 2nd enquiry. He admitted that signature

of Shri Dhani Ram appear on Exhibit M-11. He admitted that he had cross-examined management witnesses. He also admitted that he had not applied for list of witnesses or documents by making an application. He had asked for the same verbally. He denied the suggestion that copy of proceeding was supplied to him side by side but he admitted that he did not make any complaint in this behalf. He admitted his signatures on Exhibit M-20 which he filled at the time of joining service.

The learned representative for the management argued that the workman was charge-sheeted and enquiry ordered against him in which he admitted his guilt but later on the workman made a representation to give a fair chance to him. 2nd enquiry was held which was fair and proper and the management passed the impugned order on the finding of the enquiry. On the other hand, the learned representative for the workman argued that the workman did not put to loss the management intentionally, nor there was evidence of malafide. The Die could be repaired. He further argued that the finding was perverse.

I have gone through the record and find that the workman was charge-sheeted, — *vide* Exhibit M-1. The charge was intentionally breaking a Die. In explanation, Exhibit M-2 the workman denied his negligence and stated that it could be adjusted by inserting pins. The management appointed Shri S. L. Gupta Enquiry Officer, — *vide* Exhibit M-3 who held enquiry Exhibit M-4. The workman made a statement that the valuable Die was broken due to his negligence. He had put the management to a great loss but he requested for pardon. The workman signed under neat the statement. The Enquiry Officer gave his finding that in view of his confession there was no necessity of further action. The workman issued letter Exhibit M-6 to the management in which he levelled allegations against the Enquiry Officer and denied having made any statement. He termed the proceedings as a mischief. Therefore another enquiry letter, Exhibit M-7 was issued to the workman. Shri H. L. Kapoor held the enquiry in which the concerned workman participated. He examined Shri C. B. Gogia, Shri S. K. Jain and Shri S. K. Khanna, for the management. The workman examined himself and his helper Shri Ram Saran. The workman has admitted his signature on Exhibit M-4 in which he had admitted his guilt. He had also admitted that he received a copy of the proceedings, receipt is also signed separately on Exhibit M-4. He has further admitted that letter Exhibit M-6 was issued to the management later on. Annoyed by this the management he the enquiry afresh. In this enquiry I find that the witnesses have deposed against the workman and held the action if the workman irresponsible and negligent in the breaking of the Die. Therefore, I cannot hold the finding of the Enquiry Officer as perverse because the same is based on evidence recorded by him. The workman has admitted in his statement that he had asked his helper to remove a pin from the Die by which the same got broken. If I believe his version it was at the instance of the workman that the negligent act resulted in a loss to the management. It must be within the knowledge of the workman that by the strokes of the hammer damage could be caused to the Die. In such a situation it would have been better if he himself removed the pin by giving pressure necessary for the purpose. I cannot hold the helper guilty in any manner because he only followed instructions of his superior. As regards the if intention of the workman, it is correct that none of the witnesses examined by the management in the enquiry have deposed that the act of the workman was intentional but they have termed it irresponsible and negligent which is evident from the facts of the case. I find that no mischief was one to him by Shri S. L. Gupta in recording Exhibit M-4. I hold this issue in favour of the management and do not find any justification to interfere in the decision taken by them anagement.

Issue No. 2. — No evidence was led by the management on this issue, therefore, this issue is decided against the management.

Issue No. 3. — The workman is not entitled to any relief. While answering the reference I give my award that termination of services of the workman was justified and in order. The workman is not entitled to any relief.

M. C. BHARDWAJ,
Presiding Officer, Industrial Tribunal,
Haryana, Faridabad.

No 1039, dated 25th November, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 9(1)81-6 Lab/14301 –In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Usha Telehoist Ltd., Mathura Road, Faridabad.

BEFORE SHRI M. L. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD

Reference No. 395 of 1978

between

SHRI GIRDHARI LAL, WORKMAN AND THE MANAGEMENT OF M/S. USHA
TELEHOIST LTD., MATHURA ROAD,
AWARD

By order No ID/FD/11-78/39898, dated 30th August, 1978, the Governor of Haryana referred the following dispute between the management of M/s Usha Telehoist Ltd., Mathura Road, Faridabad and its workman Shri Girdhari Lal, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :–

Whether the termination of services of Shri Girdhari Lal was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notice were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed by my learned predecessor on 9th February, 1979 :–

- (1) Whether the workman remained absent for a long period ? If so, to what effect ?
- (2) Whether the settlement, dated 2nd August, 1978 was entered into under the influence duress ? If so, to what effect ?
- (3) Whether the termination of services of the workman was justified and in order ?
- (4) If not, to what relief is he entitled ?
- (5) Whether the workman was victimised for trade union activities ?

And the case was fixed for the evidence of the workman, who examined himself as WW-1, Shri Ajit Singh as WW-2, Sardar Jagjit Singh as WW-3 and closed his case. The management examined Shri Mool Chand Head Clerk, Office of the Labour Officer-cum-Conciliation Officer as MW-1 and Shri M.K. Gupta, Personnel Officer as MW-2 and closed its case. Arguments were heard. Now I give my finding issuewise.—

Issue No. 2. — WW-1 deposed that he was implicated in a false criminal case and he was challaned by the police. Under such circumstances he entered into a settlement photo copy Ex. W-17. In cross-examination he admitted having received payment shown in Ex. M-1 at the time of settlement Ex. W-17. He further replied that he did not go to the Conciliation Officer to report that settlement Ex. W-17 was entered under duress because of his apprehension of police case, nor he wrote any letter to him. WW-2 stated that the workman was informed by him about his enquiry by the police. After a few days the workman met him in the presence of Shri Jagjit Singh and he told that he had settled the dispute with the management as there were 5-6 police cases against him and the management told him to withdraw these cases in case he entered into a settlement. In cross-examination he stated that he never worked in the factory of the management. He did not know the nature of police case. The workman was his friend. WW-3 corroborated the statement of WW-2. In cross-examination he stated that he did not know if the settlement was arrived at prior or after police had enquired about the concerned workman. He never remained in the employment of the management.

MW-1 stated that he had brought summoned record. Settlement Ex. W-17 was arrived at in the presence of the Conciliation Officer and was signed by him. Receipt Ex. M-1 also bear the signature of the Conciliation Officer. According to the record the concerned workman never sent any complaint about the settlement. MW-2 stated that the management had never filed any case against the concerned workman. The settlement Ex. W-17 was signed by him and also the Personnel Manager in addition to the concerned workman and Labour Officer-cum-Conciliation Officer. Receipt Ex. M-1 was also signed by the Conciliation Officer. The workman never sent a complaint to the management that the settlement was signed under duress. The workman had received full payment at the time of signing Ex. M-1. In cross-examination he stated that Ex. W-17 and M-1 were executed at the same time. He denied the suggestion that the workman had told the management that whatever they wanted to write he agrees to the same because he was under harassment from the police. He further stated that he did not know if the workman was active worker of the union but he was member of works committee.

The learned representative for the management argued that settlement was under section 12(3) and it was binding upon the workman. The story about duress was an after-thought as the workman never wrote any letter to the Conciliation Officer or Labour Officer. He cited Lab. I.C. 1975 page 1109. On the other hand the learned representative for the workman argued that the workman was victimised. Settlement was, dated 2nd August, 1978 whereas reference was dated 30th August, 1978. He argued that the settlement was not operative and the workman was victimised.

I have gone through the settlement and find that the same is purported to be under section 12(3) of the I.D. Act. The signatures of the workman appear on both pages of the settlement. It was signed in the presence of the Labour Officer-cum-Conciliation Officer. According to the settlement the workman was to be treated as voluntarily retrenched and was to receive benefits of three months notice pay, one month's wages as compensation, earned wages, leave wages etc. as his full and final settlement. This settlement is dated 2nd August, 1978. The workman has admitted in his statement that he entered into settlement but he was under pressure at that time. As regards implementation of the settlement the workman received a sum of Rs. 1,931.40 as benefits of the settlement. The receipt Ex. M-1 is also attested by the Labour Officer-cum-Conciliation Officer. The workman was admitted having received payment. As regards allegation of duress it is nowhere in the evidence that the police ever pressed the workman or suggested to him for the settlement of his case with the management. It may be that the workman needed money or thought of settlement with the management for help in the criminal case or making good relations with it. It is into evidence that the workman was challaned by the police under section 324/325 read with section 34 IPC alongwith one Shri Om Parkash on a

complaint of an employee of the management. The case was registered, — *vide* F.I.R. No. 342, dated 2nd October, 1977 and another case under section 341/506, — *vide* report No. 153, dated 9th May, 1978. The settlement is dated 2nd August, 1978 and I do not think that it is related with the two police cases. As regards contention of the learned representative for the workman that section 12(3) of the I.D. Act was not applicable is correct. Because section 12 comes into play where an industrial dispute exists or is apprehended, but in the present case the Conciliation Officer had submitted his failure report Ex. W-14 on 31st January, 1978. According to section 20 conciliation proceedings are concluded when failure report is received by the Government. No dispute was pending at the time of settlement Ex. W-17 before the Conciliation Officer. I consider him to be a witness to the settlement arrived at by agreement between the management and the workman otherwise than in the course of conciliation proceedings. Parties were still bound by this settlement under section 18(1) of the I.D. Act. Such kind of settlement is neither imperative, nor void in law. I find the settlement as proper. I do not find any pressure upon the workman to enter into settlement. No influence or pressure was mounted upon him by the police or the management for the settlement. I, therefore, decide this issue in favour of the management and against the workman.

Issues No. 1, 3, 4 and 5. — As I have decided issue No. 2 in favour of the management, therefore, finding on these issues will be unnecessary.

While answering the reference, I give my award that as per finding given by me on issue No. 2 the workman is not entitled to any relief in this reference. I order accordingly.

Dated : The 4th November, 1981.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 1040, dated 25th November, 1981

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal Haryana, Faridabad.

No. 9(1)-81-6-Lab./14302. — In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Faridabad in respect of the dispute between the workman and the management of M/s United Oil Mills Machinery and spare parts Pvt. Ltd., Mathura Road, Ballabgarh.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 296 of 1979

between

SHRI SATBIR SINGH WORKMAN AND THE MANAGEMENT OF M/S UNITED OIL MILLS MACHINERY AND SPARE PARTS PRIVATE LIMITED, MATHURA ROAD, BALLABGARH

Present :

Shri G.S. Chaudhary, for the workman.
Shri S.L. Gupta, for the management.

AWARD

By order No. 68-79/41485, dated 21st September, 1981, the Governor of Haryana referred the following dispute between the management of M/s. United Oil Mills Machinery and Spare Parts Private Limited, Mathura Road, Ballabgarh and its workman Shri Satbir Singh, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Satbir Singh was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 26th May, 1980 :—

- (1) Whether the workman has abandoned his service of his own will ?
- (2) Whether the workman is gainfully employed and if so, to what effect ?
- (3) Whether the termination of services of Shri Satbir Singh was justified and in order ? If not, to what relief is he entitled ?

And the case was fixed for the evidence of the management, who examined Shri N.C. Bhattacharya their Works Manager as MW-1 and Shri Subhash Chander Time Keeper as WW-2. The workman examined himself as WW-1 and Shri Sahib Lal as WW-2. Arguments were heard. Now I give my findings issueswise :—

Issue No. 1.— MW-1 stated that he knew the concerned workman who had joined service on 14th July, 1975. His application for appointment was Ex.M-1 and employment from Ex. M2. No change of address was intimated to the management by him. He had brought attendance register for the year 1977-78. A letter was written to the workman copy Ex. M-3. It was sent by registered post. The same was received back undelivered and was Ex. M-4. He had passed order on Ex. M-5. A telegram Ex. M-6 was received from the workman. The workman did not satisfy him about his absence. Letter Ex. M-7 was addressed to the workman about striking off his name. Ex. M-8 was acknowledgement card and Ex. M-9 was postal receipt. He further deposed that the workman was habitual absentee. Apology letter from the workman was Ex. M-10. A show cause notice Ex. M-11 was issued to the workman which was replied,— *vide* Ex. M-12. A letter Ex. M-13 from the workman was given to the Labour Inspector after which he was taken back on duty. He again absented and show cause notice Ex. M-14 was issued to him. Remarks of the witness on Ex. M-14 were at point 'A'. Another show cause notice Ex. M-15 with remarks at point 'A' was issued to him. Report of the head of the department Ex. M-16 was against the workman. Show cause notice Ex. M-17 was again issued to him. Ex. M-18 was an apology letter from him. Ex. M-19 was another report against him and Ex. M-20 was show cause notice. Another apology letter from the workman was Ex. M-21. Copy of standing orders was Ex. M-22. In cross-examination he stated that he did not receive any medical certificate from the workman for 17th April, 1979. The certificates were received by the Time Keeper. He denied the suggestion that fitness certificate was given to him on 28th May, 1979. He had received a telegram but the workman was not taken on duty. He admitted that he attended conciliation meeting. MW-2 stated that he had brought attendance register for 1977-78. In the month of November, 1977 the workman was present from 1st November, 1977 to 3rd November, 1977 and on 12th November, 1977. He was absent from 17th November, 1977 to 24th November, 1977. In January, 1978 he was absent on 9th, 10th, half day of 12th and 22nd. In August, 1978 he was absent from 5th to 8th. In April, 1979 he was absent on 2nd, 8th to 12th and 17th to 8th May, 1979. He had sent note Ex. M-13 to the Manager. He had also put a note at point C and D on Ex. M-5. The name of the workman was removed from the

attendance register from 9th May, 1979. He further stated that he received dak of the factory. He had not received any leave from the workman by post or by hand. In cross-examination he denied the suggestion that the workman had given to him medical certificate Ex. W-1 or fitness certificate Ex. W-2. He admitted that a telegram was received from the workman on 29th May, 1979. According to the Standing Orders the name of a workman for absence was removed after 10 days.

WW-1 the concerned workman stated that on 17th April, 1979 he fell sick. He had handed over medical certificate to the Time Keeper. On 28th May, 1979, he went to him with fitness certificate but he was not taken on duty. Then he sent a telegram to the Factory Manager. He had received a letter on 1st June, 1979 in which it was written that his name had been struck off due to absence. In cross-examination he stated that he had given only medical certificate on 17th April, 1979. He had not given any other paper alongwith the same. He had not taken any receipt from the Time Keeper, nor he had taken receipt for fitness certificate, because there was no such practice. After 17th April, 1979 he had not sent any medical certificate. He denied the suggestion that he had received sickness certificate and fitness certificate on 28th May, 1979. He also denied that he had not taken certificate on 17th April, 1979. He admitted his signature on Ex. M-1, M-2, M-4, M-18 and M-17. The witness again stated that he had sign only Ex. M-1 and M-18. WW-2 stated that Shri Satbir Singh had submitted his medical certificate to the Time Keeper on 17th April, 1979 in his presence. In cross-examination he stated that he did not know the period for which E.S.I. dispensary issued certificate. He had gone to the Time office for enquiring about his leave. He did not know the period for which the medical certificate was given. He could not recognise the certificate.

The learned representative for the management argued that the workman absented himself. He was a habitual absentee. His name was removed in compliance with the standing orders which was a contract of service and held force of a statue so far the workman was concerned. On the other hand the learned representative for the workman argued that the workman was on E.S.I. leave and his name was struck off without any opportunity. He issued a telegram to the management but was not taken on duty. He further argued that absence was a misconduct under the standing orders and the management did not hold any enquiry. He further argued that name of the workman could not be struck off during sickness under section 31 of the E.S.I. Act. The learned representative for the management replied that E.S.I. certificate was valid only for one week under E.S.I. regulation number 57. The workman never submitted a certificate to the management, therefore, he was treated as absent. He further argued that no charge-sheet was necessary and the management could avail of the provision of standing orders.

I have gone through the file and find that the workman remained absent a number of times. He submitted his explanation Ex. M-10 in which he admitted that he was absent without information. Ex. M-12 is also to the same effect. As regards the case in hand the absence is admitted by the workman w.e.f. 17th April, 1979. The absence was according to him on account of illness. The workman admitted that he did not give any application alongwith the medical certificate which was denied having received by the management. Thus the workman remained absent upto 28th May, 1979 according to him, although the management removed his name w.e.f. 9th May, 1979, i.e. after 23 days. According to Ex. M-5 the Time Keeper had shown the workman as absent from 17th April, 1979 to 30th April, 1979. The Manager passed order that he should wait for another week. A letter was written to the workman on 24th April, 1979 informing him to join his duty. This letter was sent by registered A.D. post on the address given by him in his application form Ex. M-2. The same was returned undelivered having been refused and was Ex. M-4, however, letter Ex. M-7 was received, — *vide* acknowledgement receipt Ex. M-8, by the workman at the same address. By this letter he was informed about striking of this name. Thus the management had sent a call letter to the workman to join his duty. No cogent evidence was produced by the workman by which he proved leave application sent to him, rather he has admitted in his statement that he did not sent any leave application except one medical certificate of 17th April, 1979.

The management was justified in taking action under the standing orders. The contention of the management so-far-as regulation of about striking of name during illness is correct because the workman never informed the management about his sickness, nor proved his continued illness during the period of absence. It is settled law that where two provisions existed in the standing orders the management could avail either of the same. It was not necessary for the management to issue a formal charge-sheet or held a domestic enquiry in such case. The management had rightfully issued a call letter to the workman but he refused to take delivery of the registered letter. Under these circumstances, I decide this issue in favour of the management.

Issue No. 2.—The management did not lead any evidence on this issue, therefore, this issue is decided against the management.

Issue No. 3.—As I have held in issue No. 1 that the workman abandoned his job of his own, therefore, termination of service of the workman by the management does not arise. I decide this issue accordingly.

While answering the reference, I give my award that the management did not terminate the services of the workman, rather on the other hand the workman abandoned his job of his own by remaining absent. The workman is not entitled to any relief. I order accordingly.

M.C. BHARDWAJ,

Dated 4th November, 1981.

Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.

Endst. No. 1041, dated the 25th November, 1981

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.

No. 9(1)81-6Lab. 14303.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Prestolite of India Ltd., Mathura Road, Faridabad.

BEFORE SHRI. M.C. BHARDWAJ PRESIDING OFFICER INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 519 of 1978

Between

SHRI KISHAN SINGH AND THE MANAGEMENT OF M/S PRESTOLITE OF INDIA LTD., MATHURA ROAD FARIDABAD

Present :

Shri S.R. Gupta, for Shri Kishan Singh.

Shri S.L. Gupta, for the management.

AWARD

By order No. ID/FD/1/192-98/48811, dated 27th October, 1978 the Governor of Haryana referred the following dispute between the management of M/s. Prestolite of India Ltd., Mathura Road, Faridabad and its employee Shri Kishan Singh, to this Tribunal for adjudication, in exercise of the powers conferred by clause(d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Kishan Singh was justified and in order ?
If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 23rd June, 1979 :—

1. Whether Shri Kishan Singh is a workman under section 2(S) of the I. D. Act ?
If not, to what effect ?
2. Whether the termination of services of the workman was justified and in order ?

And the case was fixed for the evidence of the workman, who examined himself as WW-1, Shri Paramjit Singh another workman as WW-2 and Shri Mehar Singh as WW-3. The management examined Shri O.P. Malhotra, Personnel/Factory Manager as MW-1 and closed its case. Arguments were heard. I now give my finding issueswise :—

Issue No. 1 :— The learned representative for the workman argued that Shri Kishan Singh was not a supervisor as defined in section 2(s) of the ID Act. He was a workman. He further argued that Shri Kishan Singh had not Sanctioning authority. He performed his duties by hand as he was only a group leader. He cited 1978 I. LLJ 105, 1980 IJLLJ 16, 1975 IJLLJ 300, 1977 II LLN 517. On the other hand the learned representative for the management read over definition of workman and argued that it was a case falling under clause iv of section 2(s). He referred to management documents and cited 1970 IJLLJ 590(S.C.) 1968 Vol. I Lab. I.C. 326, 1973 Vol. 6 Lab. I.C. 269.

In the evidence WW-1 stated he joined in 1963 as an Electrician and was holding the same post at the time of his termination of services. He further stated that he had also to look after the work of 3-4 electricians. He had no authority to appoint, suspend or charge-sheet or dismiss or promote a workman. He had also no authority to sanction leave of other workmen. During his duty he had to remove defect of machines. He did not allot duty to other electricians although he passed on instructions of supervisors to them when the supervisors were not present in the factory. In cross examination he stated that at the time of joining service he used to get Rs. 175 p.m. At the time of his termination he used to get Rs. 930 p.m. He admitted that at the time of termination his designation was Foreman (Electrician). He was first promoted as chargeman and then supervisor and further as Junior Foreman and lastly as Foreman. He was promoted as Foreman in 1972-73. His services were terminated in 1978. He further stated that there were 2-3 electricians with him but they were not under him. He replied that S/Shri Ram Bhaj, Paramjit Singh, Kundan Lal, Surinderjit Singh and Iqbal Singh were also in his department. His salary was higher than the salary of others being senior. He further stated that their duty was allotted by the Production Manager or Production Engineer. He stated that he did not interview candidates, nor made any suggestion at that time but some times officers used to get his signatures. He did not write any progress report, nor recommended leave, although some times the Production Engineer used to get his signatures asking him whether there will be any loss due to the leave of any break down for the same reason. He admitted his signatures on Ex. M-1 to M-25. He

admitted that he signed attendance register in the personnel department in which other officers also signed. He stated that he did not know if separate register was maintained for the workmen. He stated that he did not sanction increment on the basis of progress report. WW-2 stated that he was working as Electrician from 20th July, 1976. He stated that WW-1 used to work by his own hands. He used to attend bigger electrical defect. In cross examination he stated that they used to submit leave applications to WW-1 which were signed by Shri Chadha. He further stated that they used to distribute their duty by taking decision themselves. He stated that duty of Shri Kishan Singh was generating operating work on spot welding machine and testing penal. WW-3 supported the version of WW-2.

MW-1 stated that Shri Kishan Singh was a senior Foreman of electrical maintenance department. He was promoted as senior Foreman w.e.f. 1st October, 1974. He was drawing Rs. 930 p.m. Copy of promotion letter was Ex. M-25. Copy of increment letter was Ex. M-26. These two letters bear the signatures of Shri Kishan Singh. His duty was to assign work to another workmen, to recommend their leave, issue gate passes, recommend annual increment and interview candidates at the time of recruitment. He also used to make leave arrangements. He further stated that he used to make attendance by punching their cards. Supervisors and Officers used to sign attendance register. He further stated that WW-2 and WW-3 were not in the employment of the management for a suitable time. He further stated that Shri Kishan Singh did not work by his own hands, rather got work from his subordinates. In cross-examination he stated that there was no duty chart for each category of workman. Shri Kishan Singh was Incharge of his department in which 10-12 workers were working. He denied the suggestion that he was leader of a team of workmen. He admitted that Shri Kishan Singh used to get work of his department from other workers. He admitted that his signatures on Ex. W-1. He also admitted that Ex. W-2 was issued by him. He admitted that Shri Kishan Singh had no authority to issue charge-sheet of promotion, demotion or dismissal, nor he could sanction leave. He was only a recommending authority. He admitted that office staff used to mark attendance in the register. He denied the suggestion that he was assigned work of generator operating spot welding machine of testing pannel.

I have gone through Ex. M-1 to M-8 and find that Shri Kishan Singh had recommended increment to electricians. He had also recommended appointment on Ex. M-9, Ex. M-10 to M-16 bears the signatures of Shri Kishan Singh as section head on leave applications. He had recommended leave on Ex. M-10 to M-12, M-14 to M-16 and he had not recommended on Ex. M-13. I have also seen Ex. M-17 to M-24 which are gate permits. Signatures of Shri Kishan Singh appear as authorising Officer. All these documents are of the year 1978. Ex. M-25 is dated 7th July, 1975 by which Shri Kishan Singh was promoted as Senior Foreman and placed in the grade of Rs. 400-30-550-EB-40-750-50-1000 and fixed at Rs. 630. Ex. M-26 was dated 27th May, 1978 by which salary of Shri Kishan Singh was raised to Rs. 900. p.m. with increment of Rs. 50 w.e.f. 1st April, 1978. It also bears his signature. The main contention of the learned representative of the work man was that he had not control of other workman but was only leader of the team.

The workman is defined by clause 2(s) of section 2 of the I.D. Act. Under sub-clause iv such person is excluded from the definition. The clause is as under :—

“who being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature”.

There is no controversy about the per mensem salary of Shri Kishan Singh, who draw Rs. 900 p.m. In the ruling cited as 1980 II LLJ page 16 it is held that is the nature of work and not nomenclature that is to be considered in deciding whether person is a workman or not. In that the case supervisory carpentry was only permanent hand entrusted with the job of shute

ing. All others were daily rated workers. 1977 IILLJ is a case of Pilot spraying aircraft, his nature of duty being technical. Whereas in the instant case Shri Kishan Singh though joined as a Electrician rose to the post of Senior Foreman gradually. It is into evidence that he issued gate passes, recommended or not recommended leave and increments and interviewed workers for employment. He also recommended special increment to his juniors as given in Ex. M-1 to M-5. Therefore, by no stretch of imagination he could be considered leader of the team. He had a special position of supervisory nature. Documents Ex. M-1 and M-2 are dated 3rd December, 1972 and 24th December, 1970 which show sanction of reward and appreciation of good work, in generator installation and putting in order spot welding machines. A considerable length of time had passed since then and I find that by Ex. M-25 Shri Kishan Singh was promoted as senior Foreman on 7th July, 1975. Therefore, under the circumstances, I do not find Shri Kishan Singh to be a workman as defined in the I.D. Act. His contention fails. Therefore, this issue is decided in favour of the management and against Shri Kishan Singh.

Issue No. 2. – As per findings given by me on issue No. 1 this issue needs no decision.

While answering the reference, I give my award that the case of Shri Kishan Singh fails on issue No. 1 and he is not entitled to any relief in this reference. I order accordingly.

The 10th November, 1981

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 1042, dated 25th November, 1981

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)81-6Lab./14304. – In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Super Bazar, Faridabad Central Co-operative Consumer Stores, Ltd., NIT., Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD
Reference No. 214 of 1979

Between

SHRI NATHILAL WORKMAN AND THE MANAGEMENT OF M/S. SUPER
BAZAR, FARIDABAD CENTRAL COOPERATIVE CONSUMER
STORE LIMITED, NIT., FARIDABAD.

Present. –

Shri Darshan Singh, for the workman.

Shri H.R. Dua, for the management.

AWARD

By order No. FD/1/103-79/34243, dated 3rd August, 1979, the Governor of Haryana referred the following dispute between the management of M/s. Super Bazar Faridabad Central Cooperative Consumer Stores Limited NIT., Faridabad and its workman Shri Nathi Lal, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :--

Whether the termination of services of Shri Nathi Lal was justified and in order ? if not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The management did not appear and an *ex parte* award was passed by my learned predecessor which was later on set aside on the application of the management. The parties later on filed their pleadings and the following issues were framed :--

1. Whether the respondent is not an Industry ?
2. Whether the workman is not such as defined in the I.D. Act ?
3. What is the effect of award of Assistant Registrar Cooperative Societies in this reference ?
4. Whether the termination of services of the workman was justified and in order ? if not, to what relief is he entitled ?

And the case was fixed for the evidence of the management, who did not produce any evidence even after repeated adjournments. The workman was given opportunities to lead his evidence who examined himself as his own witness. *Ex parte* arguments were heard. I now give my finding issueswise.

Issue No. 1. The respondent is Super Bazar Faridabad Central Cooperative Consumer Store Limited. Cooperative Stores dealing in purchase and sale of consumer goods to the society are held to be an industry in a number of cases (1974 IFIR. Vol. II, Page 295). It has also been held that the Industrial Disputes applies to Cooperative Societies as well. Therefore, this issue is decided against the management.

Issue No. 2.—The workman was salesman drawing wages Rs. 250 p.m. A salesman is a workman as held in 1970 II-LLJ page 590. Therefore, this issue is also decided against the management.

Issue No. 3.—The award of Assistant Registrar Cooperative Societies Palwal Ex. M-4 was passed on 15th June, 1977. Brief history given in the award is that the chargesheet was referred for enquiry to the Assistant Registrar and he conducted the enquiry against the concerned workman. According to the award the concerned workman admitted shortage of the store and agreed to deposit the same in instalments. He held the workman guilty and proved the charges levelled against him. The embezzlement of funds of the store amounted to Rs. 11329-45. But the award of the Assistant Registrar regarding embezzlement has no bearing on the present proceedings in which the justification of termination has been challenged. I find that the award was binding under the Cooperative Societies Act on the parties and amount recoverable under provisions of law. The workman admitted in his cross examination that arbitration proceedings were held against him but he denied the existence of any award. He admitted that he was chargesheeted in which I find the misconduct was the same. The management placed on file Ex. M-1 in which the workman admitted that a sum of Rs. 8,000 on account of shortage was outstanding against him and he wanted to make

payment by instalments. The workman denied having written Ex. M-5. He was asked to write down a specimen letter which is clear from naked eye that two writings and signatures were identical. In view of my above discussions, I hold that the parties are bound by the arbitration award passed by the Assistant Registrar, Co-operative Societies.

Issue No. 4.—In this case I find that the management did not show vigilance on pursuing these proceedings. An *ex parte* award was passed against the management but later on the management filed affidavit and the same was set aside after framing of issues. The management did not lead any evidence even three opportunities were sought on payments of costs. The burden of justification was upon the management but it failed to justify the same. I find that the written statement was neither signed nor verified by the management. In these circumstances the workman is reinstated.

As regards awarding back wages I am hesitant to pass an order to this effect because in EX. W-2 the workman stood suspended and he ran away without handing over the charge of his shop which was taken into possession with the help of the police by the management. In such situation I do not award him back wages because that may give him undue benefits. I only award him litigation costs which is assessed at Rs. 1,000.

While answering the reference, I give my award that the workman is entitled to reinstatement with continuity of service and litigation costs of Rs. 1000. The workman is not entitled for back wages. I order accordingly.

M. C. BHARDWAJ,

Dated 9th November, 1981.

Presiding Officer,
Industrial Tribunal Haryana,
Faridabad.

No. 1043, dated 25th November, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 24th February, 1982

No. 9(1)82-6Lab./1184.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Swastik Woollen Mills, G. T. Road, Panipat.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 58 of 1980

between

SHRI JAGAN NATH, WORKMAN AND THE MANAGEMENT OF M/S SAWASTIK WOOLLEN MILLS, G. T. ROAD, PANIPAT

Present—

Shri Jai, for the workman.

Shri Surinder Kaushal, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/KNL/12-80/12015, dated 5th March, 1980, under section 10(i) (c) of the I. D. Act for adjudication of the dispute existing between Shri Jagan Nath, workman and the management of M/s Sawastik Woollen Mills, Panipat. The term of the reference was—

Whether the termination of services of Shri Jagan Nath was justified and in order? If not to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. Parties appeared in response to the same, filed their respective pleadings, issues were framed. The parties adduced their evidence and closed their case. Arguments were also heard and the case was reserved for order. On 23rd December, 1981 the management has sent a copy of settlement arrived at with the workman under section 18(1) of the I. D. Act. The parties were again issued notices for verification of the settlement for 11th January, 1982. On this date of hearing the authorised representative of the workman made the following statement:—

The workman has settled his dispute with the management,—*vide* settlement Ex. M-X and received his full and final payment including his right of reinstatement or re-employment. The receipt in token of settlement is Ex. M-Y. Award may be passed accordingly.

In view of his statement no further adjudication is required and the workman settled his dispute referred to this court amicably. The reference is answered and returned accordingly.

Dated 27th January, 1982.

BANWARI LAL DALAL

Presiding Officer
Labour Court Haryana,
Rohtak.

Endst. No 440, dated 27th January, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the I. D. Act.

BANWARI LAL DALAL

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 9(1)82-6Lab./1199.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Sanjeev Enterprises, 12/2, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 295 of 1981

between

SHRI KHAJAN SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF
M/S SANJEEV ENTERPRISES, 12/2, MATHURA ROAD, FARIDABAD

Present:—

Shri Darshan Singh along with the workman.

None for the respondent management.

AWARD

This reference No. 295 of 1981 has been referred to this Court by Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/208/81/56368, dated 17th November, 1981, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Khajan Singh, workman and the respondent management of M/s Sanjeev Enterprises, 12/2, Mathura Road, Faridabad. The terms of the reference was:—

Whether the termination of services of Shri Khajan Singh was justified and in order? If not, what relief is he entitled?

On receiving the reference, notices were sent to the parties for 23rd December, 1981. On that day the representative of the workman was present, but none was present from the side of the respondent management. It was already 1.30 p.m. The case was called thrice. In these circumstances, I proceeded *ex parte* against the respondent management and the case was fixed for *ex parte* evidence of the workman for 1st January, 1982. On 1st January, 1982, *ex parte* evidence of the workman was not present and the case was adjourned to 6th January, 1982 for *ex parte* evidence of the workman.

On 6th January, 1982, *ex parte* evidence of the workman recorded. The workman appeared as WW-1, who stated that he was employed on 26th August, 1972 as a watchman at a salary of Rs. 340 by the respondent. He further stated that he was doing overtime daily for four hours and when he demanded overtime wages, the respondent management terminated his services on 8th August, 1981. The management had never paid him notice pay or service compensation. He further stated that he was un-employed in these days and prayed that he be reinstated with full back wages and continuity of service.

On believing the *ex parte* statement of the workman, I give my award that the termination of services of the workman was neither justified nor in order. So the workman is entitled for his reinstatement with continuity of service and with full back wages. I order accordingly. No orders as to costs. This be read in answer to this reference.

Dated 20th January, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endstt. 264, dated 29th January, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

The 4th March, 1982

No. 9(1)-82-8Lab./1482.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Bhogal Sports, 26 DLF, Industrial Area, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 306 of 1981

between

SHRI SUKHI RAM, WORKMAN AND THE RESPONDENT MANAGEMENT OF
M/S. BHOGALS SPORTS, 26, DLF INDUSTRIAL AREA, FARIDABAD

Shri Mohit Kumar, for the workman.

Shri J. S. Saroha, for the management.

AWARD

This reference No. 306 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—
vide his order No. ID/FD/216/81/58646, dated 7th December, 1981 under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Sukhi Ram, workman and the management of M/s. Bhogals Sports, 26, DLF, Industrial Area, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Sukhi Ram was justified and in order ? If not, to what relief is he entitled ?

After receiving this reference, notices were sent to the parties. The parties appeared on 31st December, 1981. But the case was adjourned on the request of the representative of the workman for 8th January, 1982. The representative of the workman was also directed to file the claim statement, along with the proper letter of authority of the workman on the date fixed. On 8th January, 1982, none was present on behalf of the parties. It was already 2.30 P.M. The case was called thrice. In these circumstances, I feel that the workman is not interested to pursue his case and the case is dismissed in default of the parties. So I hold that the reference is bad in law and there is no dispute between the parties. No order as to costs.

HARI SINGH KAUSHIK,

Dated the 1st February, 1982.

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 342, dated the 5th February, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the abovesaid award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-8Lab./1616—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Kishore Textile Mills, Bahalgarh-Sonepat Road, Sonepat..

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 76 of 1981

between

SHRI BHIM SINGH AND OTHERS, WORKMEN AND THE MANAGEMENT OF
M/S KISHORE TEXTILE MILLS, BAHALGARH-SONEPAT ROAD, SONEPAT

Present:—

Shri Karan Singh, for the workmen.

Shri R. C. Sharma, for the management.

AWARD

By order No. ID/SPT/28/80/11121, dated 10th March, 1981, the Governor of Haryana, referred the 14 disputes,—vide Annexure printed in Hindi. The demands included reinstatement of Shri Bhim Singh, Organising Secretary, increase in dearness allowance, annual increment, house rent allowance, uniforms, gur, soap and wheat allowance etc., between the management of M/s. Kishore Textile Mills, Bahalgarh-Sonepat Road, Sonepat and its workmen Shri Bhim Singh and others, to this Tribunal, for adjudication in exercise of the powers conferred under by clause (d) of sub-section (1) of section 10 of the Industrial Dispute Act, 1947.

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, issues were framed and the case was fixed for the evidence of the workmen. But on the last date of hearing a settlement was arrived at between the parties. The representative for the workmen stated that the management had agreed to pay one month's notice pay, retrenchment compensation, earned wages, bonus and gratuity, if due, to Shri Bhim Singh and the workman shall not be entitled for reinstatement. He further stated that he withdrew rest of the demands. The representative for the management also agreed to it.

In view of the statements given by the parties, I give my award that the dispute had been settled between the parties and there remained nothing for adjudication.

M. C. BHARDWAJ,

Dated the 2nd February, 1982.

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

No. 140, dated the 5th February, 1982

Forwarded (four copies) to the Secretary to Govt. Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act 1947.

M. C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-8Lab./1617.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Om Weaving Factory, Bahalgarh, Sonepat Road, Sonepat.

BEFORE SHRI M. C. BHARDWAJ PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 74 of 1981

between

THE WORKMAN AND THE MANAGEMENT OF M/S OM WEAVING FACTORY,
BAHALGARH, SONEPAT ROAD, SONEPAT

Present: —

Shri Karan Singh, for the workman.

Shri R. C. Sharma, for the management.

AWARD

By order No. ID/SPT/24/80/11106, dated 10th March, 1981 the Governor of Haryana referred 14 demands. The demands included reinstatement of Shri Ramsurat Yadav, Cashier, increase in dearness allowance, annual increment, house rent allowance, cycle allowance, uniforms, gur, soap and wheat allowance, etc. between the management of M/s. Om Weaving Factory, Bahalgarh, Sonepat Road, Sonepat and its workmen, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, issues were framed and the case was fixed for the evidence of the workmen. But on the last date of hearing the representative for the workmen stated that the management had agreed to pay one month's notice, pay, retrenchment compensation, earned wages, bonus and gratuity, if due to Shri Ram Surat Yadav and after it Shri Ram Surat Yadav shall not be entitled for reinstatement. He withdrew rest of the demands. The representative for the management also agreed to it.

In view of the statements given by the parties, I give my award that the disputes had been settled between the parties mutually and there was nothing left for adjudication.

Dated the 2nd February, 1982.

M. C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.

No. 141, dated the 15th February, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 9(1)82-8Lab./1618.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s N. B. Textiles, Bahalgarh, Sonepat Road, Sonepat.

BEFORE SHRI M. C. BHARDWAJ PRESIDING OFFICER, INDUSTRIAL TRIBUNAL HARYANA, FARIDABAD

Reference No. 77 of 1981

between

THE WORKMEN AND THE MANAGEMENT OF M/S N. B. TEXTILES, BAHALGARH,
SONEPAT ROAD, SONEPAT

Present:-

Shri Karan Singh, for the workmen.

Shri R. C. Sharma, for the management.

AWARD

By order No. ID/8PT/26/80/11136, dated 10th March, 1981 the Governor of Haryana referred 14 disputes. The demands included reinstatement of Shri Meharban Singh, increase in dearness allowance, annual increment, house rent allowance, cycle allowance, uniforms, soap, gur and wheat allowance, etc. between the management of M/s N. B. Textiles, Bahalgarh, Sonepat Road, Sonepat, and its workmen, to this Tribunal for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties issues were framed and the case was fixed for the evidence of the workmen. But on the last date of hearing the representative for the workmen stated that he did not want to pursue the case and withdrew it because the factory had been closed.

In view of the statement given by the representative for the workmen, I give my award that the workmen are not interested in pursuing the case as the factory had been closed.

Dated the 3rd February, 1982.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 142, dated the 5th February, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.